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READING FILE.

Service Date: February 18, 1981

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application by)
MONTANA-DAKOTA UTILITIES CO. to)
adopt increased rates for electric)
service in the State of Montana.)

DOCKET NO. 81.1.2

PROCEDURAL ORDER

Under the authority of ARM Section 38.2.2702, the Commission is entering this order setting out the procedure to be followed in this Docket. These procedures have been developed following an opportunity for all persons who intervened in the last MDU docket to suggest changes to a proposed procedural order issued.

It is HEREBY ORDERED:

1. The use of the term "parties" includes the Applicant, The Montana-Dakota Utilities Company (MDU) and all intervenors.

2. All dates listed in this schedule are mailing dates. Parties must mail all material by the most expeditious method which is available at reasonable cost.

3. The following schedule shall apply to Docket No. 81.1.2:-

(a) March 20, 1981: Final day as a matter of right for discovery and data requests directed to MDU; final day for timely filing of Petitions to Intervene by parties who are interested in and directly affected by this Docket. Final day for parties to submit names of individuals who are to appear on the service list.

- (b) April 3, 1981: Final day for completion by MDU of all answers and responses to discovery and data requests directed to MDU by other parties.
- (c) April 27, 1981: Final day for completion and service upon MDU and other parties of the prepared testimony and exhibits of all parties except MDU; final day for filing by all parties of a position statement specifying the positions to be taken in the case.
- (d) May 6, 1981: A hearing will be held at 10:00 a.m. in Miles City, Montana, to hear MDU's application for interim relief. At this hearing the Commission will consider the pre-filed testimony of the parties regarding the addition of the Coyote I generating station to MDU's rate case and whether that testimony meets the criteria for interim rate relief.
- (e) May 18, 1981: Final day as a matter of right for discovery and data requests directed to all parties by MDU and intervenor data requests of parties other than MDU.
- (f) June 10, 1981: Final day for completion of answers by all parties other than MDU to discovery and data requests made pursuant to 3(e).
- (g) June 16, 1981: A settlement conference will be held at 9:00 a.m. in the Commission's offices at 1227 11th Avenue, Helena, Montana. The Commission will participate through its staff in attempting to move the parties to a reasonable settlement of the issues. The Commission may advise the parties at this time of any issues which it considers have not been adequately addressed.

- (h) July 1, 1981: Final day for service of rebuttal testimony by MDU. Final day for service of intervenor rebuttal testimony on rate structure testimony of other parties.
- (i) July 8, 1981: Final day for any party which intends to introduce as evidence, data requests or other discovery as part of its basic case, to notify all parties of the specific data requests or other discovery it plans to so introduce.

Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, (2 copies) each Commissioner, the Commission staff and all parties.

Final day for any party which intends to request official notice of data requests, other discovery or other information, to notify all parties of the specific data requests, other discovery or other information for which official notice will be requested.

Admissability of data requests or other discovery will be governed by the Montana Rules of Civil Procedure, the Montana Rules of Evidence, the Montana Administrative Procedure Act and relevant case law. It is the Commission staff's position that these rules generally preclude a party from introducing its responses to another party's data requests or others' discovery procedures.

- (j) July 14, 1981: Opening day of hearing in Docket No. 81.1.2. Witnesses will be examined once concerning all phases of their prefiled testimony. Each witness will first be examined on direct and then on rebuttal testimony.

4. MDU will be permitted to introduce evidence in rebuttal of any evidence of any intervenor witness which was brought out during cross-examination of such witness by parties other than MDU without having been earlier pre-filed in accordance with this order. This right to live rebuttal shall be limited to that evidence brought out on cross-examination of intervenor witnesses or parties which was not contained in any previously filed testimony or exhibits in this docket. This right of live rebuttal shall be limited to such rebuttal as can be prepared and presented without a continuation of the hearings in this docket.

5. Parties seeking to intervene after the deadline, must file a Petition to Intervene with the Commission. The petition shall demonstrate the position that the intervenor will take if the intervention is granted, that the proposed intervenor has an interest in and is directly affected by this Docket, that the intervention, if granted, will not delay or prejudice the proceeding in the Docket, and good cause why the petition was not timely filed. (ARM Section 38.2.2401 et seq., and 38.2.2403).

6. The period prior to March 20, 1981, is the time for discovery by parties seeking information from MDU. All parties must submit their discovery and data requests directly to MDU, with simultaneous copies to all parties and the Commission with certificate of service attached. MDU has the right to object within five (5) days of receipt of the request. The objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling, or may schedule a hearing on the objections upon five business days notice. Rulings on objections will be made within five business days of such

hearings. Failure to object promptly will be deemed acceptance of the request, and objections to the request will not be entertained later.

7. In the event any requesting party is dissatisfied with the response to any data or discovery request, such party must, within five (5) days after receipt of such response, serve in writing upon the Commission, and simultaneously upon all parties of record, its objections to such response. The Commission may dispose of such objections by prompt ruling, or may schedule a hearing on the objections upon five (5) business days notice. Within five business days of such hearing, the Commission will issue its order either sustaining or overruling the objections. If objections are sustained, a satisfactory response shall be furnished within the time provided for the original request. This provision applies to all responses contemplated by this Order.

8. In the period following March 20, 1981, further submission of discovery and data requests to MDU by any party must be made through the Commission, and will be disallowed unless the party making the request shows good cause why the request was not made before June 27, 1980. Responses will be made within ten (10) days unless MDU obtains an extension of time.

9. Failure by the Applicant to respond by April 3, 1981 to all requests made by March 20, 1981, may, in the discretion of the Commission, result in delay of the hearing for a time equal to the time MDU is in default on such response.

10. The period from April 27, 1981 through May 18, 1981, is the period of time for MDU and other parties to seek discovery from parties in the case other than MDU. Requests shall be served upon all parties. Any

party receiving a request from MDU or another party has the right to object within five (5) days of receipt of a request, and the procedure outlined above will apply.

11. In the period following May 18, 1981, further submission of discovery and data requests by MDU and other parties must be made through the Commission, and will be disallowed unless the requesting party shows good cause why the request was not made prior to May 18, 1981. Responses to requests approved by the Commission after May 18, 1981, will be made within ten (10) days unless the party to whom the request is made obtains an extension from the Commission.

12. Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting him from introducing designated matters in evidence;
- (b) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof.

13. The term "discovery" as used in this Order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests."

It is the intention of the Commission that parties should first attempt to obtain desired information through data requests. If information so requested is not forthcoming, then a party should utilize the more formal discovery vehicles.

14. Discovery and data requests by intervenors and staff will be served on all parties. The purpose of this is to reduce the number of duplicate requests.

15. Unless otherwise agreed between individual parties, copies of answers to all discovery and data requests will be served only on parties specifically requesting them and on the Commission. In this connection the term "parties" includes the parties, their attorneys, and witnesses not located in the same town as the party; for example, all material served on the Montana Consumer Counsel must likewise be served upon his witness, Hess in Minneapolis and his witness Wilson in Washington, D.C. If any party wants material requested by any other party, it should so inform the party to whom the data request or discovery was directed.

16. Prepared direct, answer and rebuttal testimony will be adopted into the record without recitation by the witness. Objections to prefiled testimony and motions to strike will be made in advance of the hearing, according to the following schedule: (1) as to MDU direct testimony and exhibits, at the time answer testimony is filed; (2) as to answer testimony and exhibits, at the time rebuttal testimony is filed; and (3) as to rebuttal testimony and exhibits and any other testimony or exhibits otherwise mentioned, within one week after the filing of such testimony and exhibits.

The Commission contemplates a progressive narrowing of issues as testimony proceeds from direct to rebuttal. Introduction of new issues or significantly different data will be carefully scrutinized, and disallowed unless reasonably related to the testimony prefiled in conformance with this order.

17. The rules of evidence applicable in the District Courts of the State of Montana at the time of the hearings in this Docket will be used at the hearings.

18. Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record without reading, as in the case of other prepared written testimony.

19. Two copies of prepared written testimony shall be given to the court reporter.

20. All exhibits and prepared written testimony shall be marked for identification in advance. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

21. When cross-examination is based on a document not previously filed with the Commission, either copies of the document will be made available at that time to the Commission, or good cause will be shown why copies are not available.

22. Objections by any party to any procedural matter connected with this Docket, including objection to any notice given, shall be raised on written or oral motion at the earliest possible time in order that the Commission may make any necessary correction.

23. All parties shall serve the noted number of copies of pleadings on the people listed on the most current service list in the files of the Commission.

24. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is

granted, the party requesting oral argument shall notice the same for hearing before the Commission.

Should the dates established in this order be changed, an amended procedural order will be issued. The Commission may, at any time prior to the hearings, suspend the schedule established herein in order to permit additional staff data requests and to allow for the filing of staff testimony. If this schedule is suspended, an amended procedural order will be issued fixing a new schedule.

25. The Commission has adopted several measures intended to facilitate public participation in this Docket:

(a) The Position Statements referred to in section 3(c) are intended to be short, clear statements of each party's basic contentions, and should be written with the general public in mind.


(b) Prefiled testimony of any individual should be accompanied by a short, clear summary of that testimony. This summary should also be written with the general public in mind, and is not intended to become part of the record. MDU must file summaries on or before April 27, 1981.

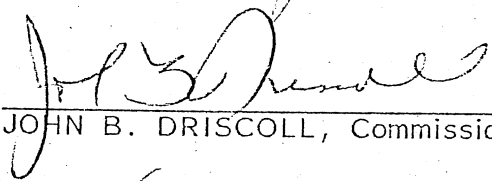
(c) It is likely that satellite hearings for public comment will be conducted; locations, dates and times for these hearings will be established at a later date.

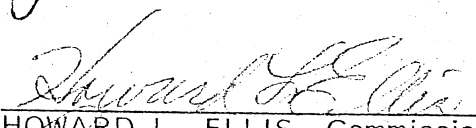
26. Nothing in this Order shall be construed to limit the legally established right of staff to inspect the books and accounts of MDU at any time.

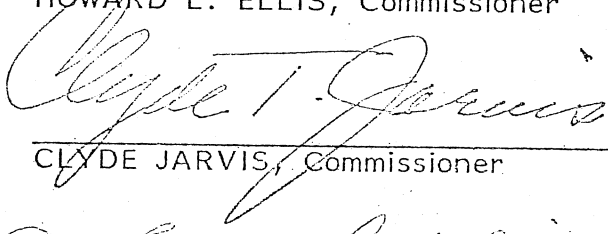
DONE AND DATED THIS 9th day of February, 1981, by a vote of 5-0.

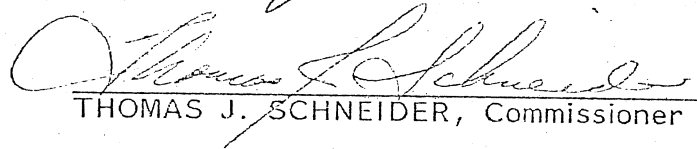
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.


GORDON E. BOLLINGER, Chairman

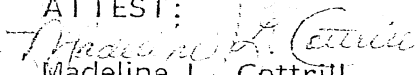

JOHN B. DRISCOLL, Commissioner


HOWARD L. ELLIS, Commissioner


CLYDE JARVIS, Commissioner


THOMAS J. SCHNEIDER, Commissioner

ATTEST:


Madeline L. Cottrill
Secretary

(SEAL)